App. F. IX-4

Previous References.

1941. (Legis)

File No. 2-41

Serial Nos. 34

Later References.

(9)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. one

Part B for Sept '41

SUBJECT.

Extirement of Mysore State Subjects under Defence of India Rules.

C. G. Vajravelu
25.9.41

Extonment of subjects - Defence of India Rules

General and Revenue Secretariat
R. A. & L. C.

File No. ---------- of 194 .

App F III-2

Serial No.

From

The Secretary to the Hon'ble the President

7. 79- 41/W dated 22. 8. 41

re extonment of enemy State subjects.

It is a well known principle of international law that a subject of a State cannot be extoned and sent away to another State. This principle has been recognised in the Defence of India Rules and under the proviso to 26 (1), a British Indian subject cannot be extoned from British India and a person ordinarily resident in a Province cannot be sent away from that Province. The Enemy Countries would similarly enquire that a enemy subject is not extoned from enemy

It is now stated that two undesirables belonging to a State have been extoned from that State and had to be arrested in a British Indian Province. It is requested that in future this Government may not pass such orders. From the language used in paragraph 3 of the Residency letter it would appear that this Government has passed the orders in question.

As no such orders appear to have been passed here, the CB will be consulted

NOTE—Contn. Sheet.

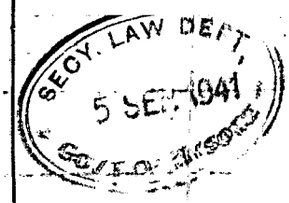
1-84/RL

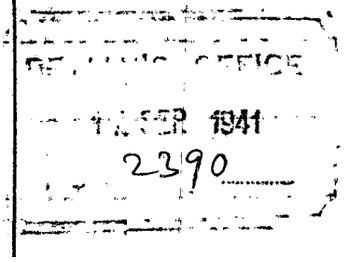
Defence of India Act & Rules: Extonment of Salyres

File No. of 194

General and Revenue Secretariat
R. A. & L. C.

Serial No.





Whether any orders of the kind referred to has issued from there

5.9.41

Law Secy)

Hm
11/9/41.

CB. for Krishna furnishing the information.

12/9/41

Subd. No orders were ever issued externing any Mysorean from the State, either under the provisions of the Public Security Act or of the Defence of India Act as applied to Mysore. Under Sec. 32 of the Public Security Act, an order for externment can be made only in the case of a foreigner. Similarly, under rule 26 (1) (a) of the Defence of India rules, no Mysorean can be expelled from the State.

12/9.

No orders or statements have been passed in the CB.

A draft upg to the Residency is put up for Consideration.

12.9.41

Law Secy)
Chief Secy
W/C.)

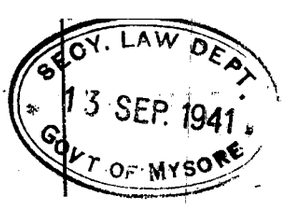
Hm
13/9/41
13.9.

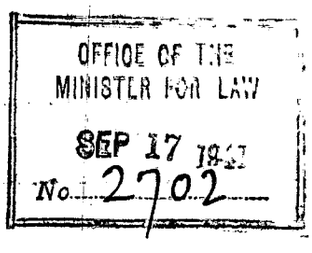
13/9
17.9.

Law Minister
& Dewan

17/9

18/9/41





The reply to this communication should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

No. F 79-41/W.

L/1389

FROM

THE SECRETARY TO THE HON'BLE THE RESIDENT IN MYSORE

To

The Chief Secretary to the Government of
His Highness the Maharaja of Mysore, Bangalore.

Dated Bangalore, the 22nd August 1941

Defence of India Act and Rules.

SIR,

I am directed to say that a complaint from a Provincial Government has recently been received by the Government of India to the effect that two undesirable persons belonging to an Indian State had been externed from that State and had had to be arrested in the Province concerned.

2. The correct procedure in the above case should, if the two undesirables concerned were ordinarily resident in the State, have been for the State Government concerned to deal with them themselves in accordance with the second proviso to sub-rule (1) of Defence of India Rule 26 (please see the Defence Co-ordination Department Notification No.356-OR/40 dated the 28th March 1940, copy of which was sent to the Government of Mysore with letter from this Residency No.F.59-39/W dated the 24th April 1940).

This adds the 2nd proviso to section (1) of rule 26 of the Defence of India Rules which has been incorporated as they R gets copy of the letter placed below.

3. I am to point out the correct procedure, and to request the Government of Mysore not to pass orders in future under the State version of Defence of India Rule 26(1)(c) externing persons ordinarily resident in the States. Copies of paragraphs 142 and 189 of Mulla's Insolvency Law which give judicial interpretation of the phrase "ordinarily resident" are attached herewith for guidance.

I have the honour to be,
Sir,
Your most obedient servant,

for SECRETARY TO THE RESIDENT.

VN

Paragraphs 142 and 189 of Mulla's Insolvency Law.

----:0:----

x x x

142. Ordinarily resides or has a dwelling-house.- To give the Court jurisdiction under this section the debtor must have ordinarily resided within the jurisdiction within a year before the date of the presentation of the petition. This was the period prescribed by the Bankruptcy Act, 1883, on which the Presidency-towns Insolvency Act is based, and the same period is prescribed by the Bankruptcy Act, 1914. The condition as to the period of residence is important. It does not occur in section 16 of the Code of Civil Procedure, 1908, or in section 11 of the Provincial Insolvency Act. It is sufficient to give the Court jurisdiction, under the Code that the debtor "resides" within the jurisdiction, and under the Provincial Insolvency Act, that the debtor "ordinarily resides" within the jurisdiction. Decisions, therefore, under the Code and the Provincial Insolvency Act must be accepted with caution. As to dwelling-house also the condition is that the debtor must have had it within a year before the date of the presentation of the petition. See paragraph 189 below.

What constitutes residence within the meaning of the Act is a question of fact in each case. English cases on the subject are instructive. Where a debtor, who was not domiciled in and had no dwelling-house or place of business in England, had for 18 months previous to the presentation of a bankruptcy petition against him retained a room at an hotel in London for which he paid continuously during that time, and was treated as an ordinary resident there, it was held that he had "ordinarily resided in England" within the meaning of the Bankruptcy Act, 1883, and that the creditor was entitled to present a bankruptcy petition against him. The same was held of a foreigner who in order to carry on a action stopped at hotels in England for nine months before the petition. Casual visits to London and residence in lodgings on such occasions have been held not to constitute "ordinary residenc in England". Where a debtor, who had resided in a house of his

own

own in England , had gone to reside abroad, and abandoned the house as his residence more than a year before the presentation of a petition against him, and had not again adopted it as his residence, though he might at any time during the year, had he chosen to do so, have gone to reside in it, it was held that he could not be considered to have a "dwelling-house" in England within the period prescribed by the section. In Re Hecquard, a domiciled Frenchman, who had come to England to prosecute an action commenced by him in an English Court, took furnished rooms in a house in London which he occupied exclusively for three months with his wife and servants from March to June. During the three months he paid frequent visits to France and at the end of that period he returned to France. In September of the same year a bankruptcy petition was presented against him in the London Bankruptcy Court. It was held that he had a "dwelling-house" in England within a year before the date of the presentation of the petition within the meaning of the Act, and that the petition was properly presented against him.

189. "Ordinarily resides." - The word "residence" is an elastic word, and whether it is used in a particular Act or in a particular section in a narrow or more extended meaning is to be determined according to what the Court believes to have been the intention of the legislature in framing the provision in which the word occurs. The word "residence" denotes the place where a person eats, drinks and sleeps; the mere fact therefore, that a person owns a house in a place does not constitute that house his residence.

The residence contemplated by the section need not be permanent or continuous. It may be temporary, but it must be bona fide, If a person abandons his last residence and goes to another place with the bona fide intention of residing there, he will be deemed to reside in that place within the meaning of section 11. In such a case the duration of his residence is immaterial. A temporary residence however, at a place with the sole object of taking the benefit of the Act is not residence within the meaning of the section. Occasionally staying with

a friend

a friend or a relation at a certain place does not constitute that place a residence. The section says, "ordinarily resides" and not merely "resides". A visitor, therefore, to a place is not "ordinarily resident" in that place. A debtor may reside at two places, and in that case an insolvency petition may be presented by or against him in both places and he may be adjudged insolvent simultaneously in both places. See paragraph 142 above.

----:C:----

VN

Confidential Branch,
G. R. S.

Send A statement showing the names of persons ordered from the state to put up as foreigners.

Ld
1749

Secy:
11/6
17/9/41

List of persons deported from the Mysore State.

in 1937-38.

1. B.N. Gupta (Editor of "Prajamatha" - permitted subsequently to return to the State.)

2. C.B. Mouniah.

Externments under the Mysore Public Security Act, 1939.

1.*M.A. Parasuram	C.B.45-39-12	Externed from the State for a period of one year.
2. Sarvagna Murty	C.B.45-39-101	
3. C.B. Mouniah	C.B.45-39-90	
4. K.C. Phillips	C.B.45-39-162	K. G. F.
5. Dr. Subrahmanyam	C.B.45-39-163	
6. Manavalan	C.B.45-39-165	Ex-employees of the Railway Workshop.
7. Ramaswamy	" 166	
8. Venugopal	" 167	
9. K.V. Parameswaran Nair (Palghat)	" 175	

*M.A. Parasuram was again externed from the State in G.O. dated 28-10-40 (C.B.63-40-2)

DRAFT

Legis 2-41-34

Dl. dl 23-9-1941

To

Secretary to the Hon'ble the Resident in
Mysore, Bangalore.

Sir,

With reference to your letter No. F.79-41/W dated 22nd August 1941 regarding the complaint from a Provincial Government of externment by an Indian State of two undesirable persons belonging to the State, I am directed to state that no Mysore subject has so far been externed from the State, nor does this Government ever propose to extern its subjects from Mysore.

I have, etc.

13/9/41.
Secretary to Government,
Law Department.

23/9/41

Rd 541

23rd September 1941.

Sir,

With reference to your letter No.F.79-41/W dated 22nd August 1941 regarding the complaint from a Provincial Government of externment by an Indian State of two undesirable persons belonging to the State, I am directed to state that no Mysore subject has so far been externed from the State, nor does this Government ever propose to extern its subjects from Mysore.

I have the honour to be,
Sir,
Your most obedient servant,

For Secretary to Government,
Law Department.

TN-2)